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No. 82-343

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

ROBINSON BUS SERVICE, INC., STEWART BUS COMPANY, INC., RAPID TRANSPORTATION, INC., STUDENT TRANSIT CORPORATION and NORTHTOWN BUS SERVICE, LTD.,

Petitioners,

v.

WILLETT MOTOR COACH CO.,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, First Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

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Date: September 22, 1982

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SUMMARY OF ARGUMENT

The petition for a writ of certiorari should be denied. No federal questions were raised in or ruled upon by the Circuit Court of Cook County, Chancery Division, the Appellate Court of Illinois, First District, Second Division or the Illinois Supreme Court. This petition was filed solely for the purpose of causing the Illinois Supreme Court to delay the issuance of its mandate, thereby mooting the relief ordered by the Appellate Court of Illinois.

ARGUMENT

PETITIONERS FAILED TO RAISE OR PRESERVE ANY FEDERAL QUESTION IN THE COURTS OF THE STATE OF ILLINOIS THEREBY FAILING TO COMPLY WITH THE JURISDICTIONAL REQUIREMENTS AND RULES OF THIS COURT.

The petition for a writ of certiorari in this case is a blatant abuse of this Court's proceedings. Respondent, Willett Motor Coach Co., sued petitioners and the Board of Education of the City of Chicago to have a three-year busing contract invalidated because the Board failed to notify Respondent of a critical amendment to the bid specifications. The Appellate Court of Illinois held that the Board of Education acted illegally and ordered the Circuit Court of Cook County to cancel the contract entered into pursuant to the illegal bidding procedures. At the time the Appellate Court ruled and the Illinois Supreme Court denied leave to appeal, one year still remained on the invalid contract. Petitioners, as parties to the illegal contracts, have filed this frivolous petition for a writ of certiorari in order to delay enforcement of the Appellate Court mandate. Even if unsuccessful, petitioners will have prevented justice from being done by delaying the Court's mandate until the point becomes moot.

Petitioners strain to contrive a federal question from the facts of the instant case but are unable to fabricate even a make-weight argument that the alleged federal question was raised in the state courts. The pleadings upon which this case was tried are reproduced in full in Willett Motor Coach Co.'s Appendices 1-5 (R. 245, 288, 306, 321, 342, 357). A review of the opinion, orders and pleadings clearly reflects that no federal question was litigated in the courts of the State of Illinois. Since no

federal question was raised by any party, at any stage of the litigation, the requirements of 28 U.S.C. § 1257(3) and U.S. Sup. Ct. Rule 21.1(h), 28 U.S.C. have not been met by petitioners.

This Court's pronouncements in *Webb v. Webb*, 451 U.S. 493, 101 S. Ct. 1889, 68 L. Ed. 2d 392 (1981) are instructive if not dispositive of petitioners' petition. *Webb* involved a custody dispute between the mother and father of a minor child. The mother filed a petition for writ of certiorari in this Court and the father never disputed the mother's contention that a federal issue had been properly raised. Certiorari was granted. This Court ultimately dismissed the writ for want of jurisdiction and, in so doing, stated:

> Because this case comes to this Court from a state court, the relevant jurisdictional statute is 28 U.S.C. §1257. As applied to the circumstances of this case, that statute requires that in the state courts petitioner have "specially set up or claimed under the Constitution . . . of . . . the United States" that right which she now seeks to have this Court enforce. 28 U.S.C. §1257(3). Similarly our Rule 21.1(h) requires the petitioner to "specify the stage in the proceedings, both in the court of the first instance and in the appellate court, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court." Our examination of the record convinces us that petitioner failed properly to raise or preserve a claim under the Full Faith and Credit Clause of the Federal Constitution in the Georgia courts.
>
> We note first that nowhere in the opinion of the Georgia Supreme Court is any federal question mentioned, let alone expressly passed upon. Nor is any federal issue mentioned by the dissenting opinion in that court. This Court has frequently stated that when "the highest state court has failed to pass

> upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." [citations]

Webb v. Webb, 451 U.S. at 495-6, 101 S.Ct. at 1891, 68 L. Ed.2d at 396.

This analysis is applicable to the case at bar. Petitioners' petition does not and cannot specify how and when a federal question was raised. The pleadings frame no federal questions. Nowhere in the opinion of the Appellate Court of Illinois or in the orders of that court and the Illinois Supreme Court is any federal question mentioned. Here, as in *Webb*, this Court should assume that the omission of a reference to a federal question was due to want of proper presentation in the state courts.

The petition for a writ of certiorari was filed, therefore, only in an attempt to have this Court's judicial process consume the remainder of the third year of the contract held illegal by the Appellate Court of Illinois. Respondent prays for an expedited denial of this frivolous petition in order to minimize the effect of petitioners' tactics.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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